

EJNYICIN Y

01-cv-3245

HURLEY

MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ MAY 25 2006 ★

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

LONG ISLAND OFFICE

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 29<sup>th</sup> day of March, two thousand and six.

PRESENT: HON. DENNIS JACOBS,  
HON. PIERRE N. LEVAL,  
Circuit Judges,  
HON. JED S. RAKOFF,<sup>1</sup>  
District Judge.

-----X  
METRON TECHNOLOGY DISTRIBUTION  
CORPORATION,

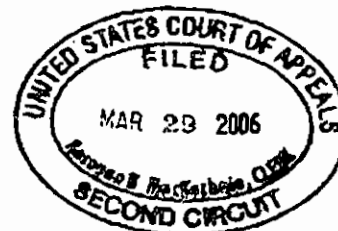
Movant,

TOKYO ELECTRON ARIZONA, LLC,

Plaintiff-Counterclaim-  
Defendant-Appellee,

-v.-

DISCREET INDUSTRIES CORPORATION and  
OVADIA MERON,



05-2522-CV

<sup>1</sup> The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

Issued as Mandate:

4/19/06

Defendants-Counterclaimants-  
Appellants,

HUMMEL MACHINE AND TOOL COMPANY,  
EDWARD EVANS, EASTERN MANUFACTURING  
SERVICES, INC., NEW HORIZON MACHINE  
COMPANY, doing business as Tirrena  
Tech or ASI, GILBERT PRECISION MACHINE  
and JOHN AND JANE DOE 1-30,

Defendants.

- - - - -X

APPEARING FOR APPELLANTS: OLEG RIVKIN, Fox Horan &  
Camerini LLP, New York New York,  
for Discreet Industries  
Corporation and Ovadia Meron.

APPEARING FOR APPELLEE: EDGAR H. HAUG, Frommer Lawrence  
& Haug LLP (Kevin Murphy and  
David A. Zwally, of counsel),  
New York, New York, for Tokyo  
Electron Arizona, LLC.

Appeal from the United States District Court for the  
Eastern District of New York (Hurley, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED  
AND DECREED that the judgment of the district court be  
AFFIRMED.

Tokyo Electron Arizona, LLC and Ovadia Meron  
("defendants") appeal from a judgment, entered in the United  
States District Court for the Eastern District of New York  
(Hurley, J.), following a jury verdict--and numerous post-  
trial motions to set aside the verdict--in favor of  
plaintiff Tokyo Electron Arizona ("TAZ") on its claims of  
misappropriation, conversion, tortious interference with  
contract, and unfair competition under both the Lanham Act

1 and New York State law. (TAZ lost on its RICO claim and  
2 withdrew its unjust enrichment claim from the jury's  
3 consideration.) The jury verdict sheet adds up to \$6.3  
4 million in compensatory damages, \$3.6 million in punitive  
5 damages, and \$1.5 million in attorneys' fees. At base, this  
6 case concerns defendants' theft and use of TAZ's trade  
7 secrets for the production of replacement parts for the  
8 "Eclipse" machine, which is used to manufacture  
9 semiconductors.

10  
11 (1) As to whether the jury awarded duplicative damages,  
12 defendants have waived any argument regarding the jury  
13 instruction or verdict sheet given their failure to raise  
14 this issue in their requests to charge or at the charging  
15 conference, or to lodge a timely objection, or to request  
16 that the court poll the jury. See Rule 51, Fed. R. Civ. P.;  
17 Lavoie v. Pacific Press & Shear Co., 975 F.2d 48, 54-55 (2d  
18 Cir. 1992).

19  
20 (2) The court did not abuse its discretion in issuing a  
21 permanent injunction as to all 266 parts of the Eclipse  
22 machine to prevent any future misappropriation of TAZ's  
23 trade secrets by defendants. Rondeau v. Mosinee Paper  
24 Corp., 422 U.S. 49, 62 (1975); Knox v. Salinas, 193 F.3d  
25 123, 128-29 (2d Cir. 1999) (per curiam).

26  
27 (3) The court correctly denied defendants' post-verdict  
28 motion for judgment as a matter of law on TAZ's unfair  
29 competition claims: TAZ presented evidence of actual  
30 customer confusion. See Resource Developers, Inc. v. Statue  
31 of Liberty--Ellis Island Found., Inc., 926 F.2d 134, 139 (2d  
32 Cir. 1991) (Lanham Act); WWW Pharm. Co., Inc. v. Gillette  
33 Co., 984 F.2d 567, 576 (2d Cir. 1993) (New York law).

34  
35 (4) The court correctly denied defendants' post-verdict  
36 motion for judgment as a matter of law on TAZ's claim based  
37 on tortious interference with contractual relations: TAZ  
38 presented evidence sufficient to support the judgment,  
39 including defendants' knowledge of the existence of a non-  
40 disclosure agreement between TAZ and one of its suppliers.  
41 See Albert v. Loksen, 239 F.3d 256, 274 (2d Cir. 2001).

1 (5) TAZ was entitled to lost profit damages sustained  
2 after September 18, 2003 because § 12.1 of the asset  
3 purchase agreement among TAZ, Tokyo Electron Limited (TAZ's  
4 parent company), and Metron reserved TAZ the right to such  
5 damages.  
6

7 (6) As the "prevailing party" in this suit, TAZ was  
8 entitled to attorneys' fees under the Lanham Act. 15 U.S.C.  
9 § 1117(a).  
10

11 (7) The court correctly upheld the jury's punitive  
12 damage award because defendants adduced no evidence or  
13 argument demonstrating that that award was excessive or  
14 beyond the defendants' ability to pay. See Smith v.  
15 Lightning Bolt Prods., Inc., 861 F.2d 363, 373 (2d Cir.  
16 1988); see also BMW of N. Am. v. Gore, 517 U.S. 559, 574-75  
17 (1996).  
18

19 We have reviewed defendants' remaining arguments and  
20 find them all to be without merit. For the foregoing  
21 reasons, the judgment of the district court is hereby  
22 **AFFIRMED.**  
23  
24  
25

26 FOR THE COURT:

27 ROSEANN B. MACKECHNIE, CLERK

28 By:

29   
30

Lucille Carr, Deputy Clerk

A TRUE COPY

Roseann B. MacKechnie, CLERK

By:   
DEPUTY CLERK